UNITED STATES PATENT AND TRADEMARK OFFICE

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10/706,025	11/12/2003	Elmer G. Musser JR.	1073.002	6195

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MENDELSOHN, DRUCKER, & ASSOCIATES, P.C.
1500 JOHN F. KENNEDY BLVD., SUITE 405
PHILADELPHIA, PA 19102

EXAMINER
RAMAN, USHA

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)	
Office Action Summary	10/706,025	MUSSER, ELMER G.	
	Examiner	Art Unit	
	USHA RAMAN	2424	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 April 2009*.

2a)☒ This action is **FINAL.** 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 9-32* is/are rejected.

7)☒ Claim(s) *8* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed April 15th, 2009 have been fully considered but they are not persuasive.

Applicant insists (see Remarks, page 4) that, "if any elements of Zetts correspond to any elements of Copley, then they are the respective above mentioned video (of Zetts) and provider servers (of Copley)", and subsequently concluding (see Remarks, page 4) that "the only obvious combination of the teachings Zetts and Copley would result in the entire system of Zetts being used in the host providers cloud 196 of Copley" and that the combination as suggested by the examiner "is implausible because the features belong to separate and distinct elements of the combined system". Examiner respectfully disagrees with applicant's contentions. While Zetts discloses syncing up a secondary server to a primary server and that a first and second playlist execute for each respective server, Zetts remains silent on updating playlist for a secondary server in the event of failure. Copley discloses generation of a new playlist and specifying a play offset in the playlist to resume playback of content prior to failure. Accordingly one ordinary skilled in the art could have modified Zetts to generate a new playlist to mirror the first primary playlist and allow playback to resume at a secondary server.

Applicant further argues (see Remarks, page 4) that, "Copley clearly teaches that its client is responsible for maintaining the information about the failure point and forwarding the clip referenced at the second station to that point. Consequently it cannot be said that Copley provides any motivation to add an offset attribute to the playlist of Zetts". Examiner

respectfully disagrees. The motivation to synchronize playback of two streams is already

taught by Zetts, wherein video is queued by a starting offset. Copley merely discloses

conveying such information in a secondary playlist corresponding to a second server, when a

first server goes down. Accordingly, Copley discloses that mirroring playback information

from the playlist so that the end user does not perceive any changes.

Applicant argues (see Remarks, page 5) with respect to the limitation of "attributes

comprising a . . . start of message" that, "the examiner asserted that the proposed

combination of Zetts and Copley would make such an attribute obvious. However, . . . the

proposed combination, even if appropriate, . . .would not teach such a play list having a start

of message attribute". Examiner respectfully disagrees. Copley discloses generation of a

new playlist that resumes play back of a clip from a point where failure occurred. The

secondary playlist accordingly comprises a "start of message" attribute, that allows it to start

playback of a content from secondary server from a given offset.

Applicant further argues (see Remarks, page 5) that, "the term 'playlist' used in

Copley refers to a list materially different from both the playlist of Zetts and the play list

recited in claim 1" stating that, "there is no teaching in Copley for attributes such as

broadcast time in a play list" and (see Remarks, page 5-6) that, "such an attribute would

make no sense n the system of Copley, where content is streamed in response to a request

from a user and not broadcast by a server at some predetermined time". Applicant's

arguments have been noted, however Copley is merely relied upon for teachings of how

transition of playlist takes place from a first server to a second server. The attributes of start

time, duration, etc. are already identified by Zetts, wherein Zetts additionally discloses that

when a video content is queued, it is queued with a start of message data, wherein Copley further discloses relaying play offset to the newly generated playlist.

Applicant argues (see Remarks, page 9) that, "the selection of elements for inclusion in a playlist is not evidence of a playlist validator", arguing limitations of the playlist validator from the specification. However, it is noted that the features specifically defining the function of a playlist validator, upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The playlist validator therefore is accorded its broadest reasonable interpretation, as taught by Copley.

Finally, applicant's arguments stating (see Remarks, page 4) that, "Examiner's assertion regarding the suggested combination improperly relied on hindsight and used applicant's recited claim as a template for piecing together disparate elements of actual and alleged prior art in an attempt to generate something similar to a claimed embodiment of the invention" have been noted. However, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

For these reasons stated above, the rejection is maintained.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 9-16 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. All the methods recited in claim 1 may be performed manually by an operator, wherein neither the playlists nor the performed method, are necessarily tied to a particular machine.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-5, 9-12, 16-20, 22-25, 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zetts (US Pat. 6,378,129) in view of Copley et al. (US PG Pub. 2003/0061305).

Regarding claims 1, 18, 23 and 30, Zetts teaches a method of playlist chasing comprising:

6. receiving a reference play list defining a plurality of attributes for each of one or more program segments (col. 5, lines 8-14), the attributes comprising an on-air time (col. 5, lines 14-22), and a duration for each program segment (col. 5, lines 14-22);

comparing at least one on-air time in the reference playlist to a specified reference time; identifying, based on the comparison, at least one program segment in the reference playlist that is active at the specified reference time; and adjusting, based on the at least one identified active program segment, one or more attributes for one or more program segments in the reference playlist (col. 11, lines 12-18; col. 12, line 43-col. 13, line 5).

Zetts discloses that two playlists are typically executed, one for each server. In the event of a failure, however Zetts is silent of using an active playlist and adjusting based on the identified active program, the one or more attributes in the reference play list to create a new playlist for the secondary server. Zetts further notes that a video is enqueued with command identifying a start of message (col. 2, lines 39-43), which can be the first frame, or some offset into the video.

In an analogous art, Copley discloses the method of, in an event of failure, generating a new playlist [0033], with the offset of the clip in progress can be restored [0084]. Accordingly Copley is evidence of creating a generating a new playlist for a secondary server, the secondary playlist identifying an offset of a video program in progress to resume the content at point of interruption. The secondary playlist accordingly comprises a "start of

message" attribute, that allows it to start playback of a content from secondary server from a given offset.

It would have been obvious to one of ordinary skill in the art to incorporate the teachings of Copley into the system of Zetts thereby creating a new playlist for a secondary server that is mirrored from a reference play list and further identifying an offset attribute in the play list so that video content previously in progress can be resumed at a point in timeline at which the failure occurred, thereby providing seamless playback at the client. See also Zetts: col. 2, lines 38-43 and col. 5, lines 14-22.

Regarding claim 2, Zetts teaches wherein: the reference playlist corresponds to a playlist currently being executed by a first subsystem that sources an on-air feed (col. 4, lines 34-36—primary server plays out video clips directly to air); and the specified reference time is based on the current time of day (col. 12, line 43-col. 13, line 5—"local time").

Regarding claims 3, 19 and 24, Zetts teaches executing the new playlist on a second subsystem that provides failure protection for the first subsystem (col. 4, lines 34-36—secondary server).

Regarding claims 4, and 5, Copley discloses an internet based streaming subsystem that is capable of hosting a plurality of active users [0127]. While silent on specifically multicasting to the plurality of users, examiner takes Official notice that multicasting streams were well known in the art at the time of the invention. Accordingly, it would have been obvious to multicast certain events such as live feeds to a plurality of users thereby streaming the live content to plurality of users on the internet.

Regarding claims 9, 20 and 25, Zetts teaches selecting the one or more program segments in the reference playlist to adjust, taking into account a queuing delay associated with a source of each selected program segment (col. 12, lines 56-64—network delay and queuing delay).

Regarding claim 10, Zetts teaches wherein at least one active program segment is not selected to be adjusted based on the queuing delay of the source associated with the active program segment (col. 12, lines 56-64).

With regards to claims 11, and 12, Zetts stores multiple play lists (200 and 210). Copley further discloses that a selection criteria used for the play list generator comprises a ruleset resolver [0040], [0041]. Copley further discloses that depending on time of day, certain elements (e.g. promotional material) that would be included in play list can vary. While Copley is silent on the step of selecting from a plurality of playlist, examiner takes official notice that it was well known in the art to maintain alternative play lists/line ups for different times of days or comprising different promotional material. Accordingly it would have been obvious to store a plurality of playlist configurations in the server and use the ruleset resolver to select a play list according to the rules specified therein.

Regarding claims 16, 22 and 27, Zetts teaches wherein two or more program segments are from different sources (Fig. 2—videos from sources, such as ABC, FORD, McDonald's, etc., are stored in video archive 140 using hard disk storage and/or a tape library).

Regarding claim 17, Zetts teaches wherein at least one of the one or more program segments is sourced by a video server (Fig. 1—100).

Regarding claim 28, Zetts teaches wherein at least one content sourcing subsystem includes: an automation server adapted to execute a playlist (Fig. 1—100); a plurality of content sources (Fig. 2—videos from sources, such as ABC, FORD, McDonald's, etc., are stored in video archive 140 using hard disk storage and/or a tape library); and a content router coupled to the outputs of the content sources (Fig. 1—165), wherein: the automation server is adapted to communicate information derived from the playlist to one or more of the content sources in the plurality of content sources (col. 4, lines 47-50); and the content router is adapted to select an output of one of the plurality of content sources and output a routed output upon which the subsystem stream of content is based (col. 4, lines 54-56).

Regarding claim 29, Zetts teaches a network management station adapted to monitor the status of the subsystems and, in the event of a failure of a subsystem, report this failure to the automated playlist chaser (col. 4, lines 33-45; col. 5, lines 1-7).

Regarding claim 31, Zetts in view of Lewin teaches, wherein the adjusting step comprises adjusting, based on the at least one identified active program segment, at least one of the on-air time, the start-of message, and the duration attributes for the one or more program segments in the reference playlist to create the new playlist (col. 12, line 43-col. 13, line 5—play offset of the target video is adjusted to create the new playlist in the secondary video server) and Lewin (see [0042]).

7. Claims 6, 21, and 26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Zetts (US Pat. 6,378,129) in view of Copley et al. (US PG Pub. 2003/0061305) as applied to claim

1 above, and further in view of Kenner et al. (US Pat. 5,956,716) and Rowe et al. (US PG

Pub. 2005/0060759).

     With regards to claim 6, the system is silent on the reference playlist intended for a

first on-air feed that is intended for viewing in at least a first zone and a specified reference is

based on the current time of day in a second time zone that is different than the first time

zone. Zetts however discloses referencing current time of day when attempting to

resynchronize a secondary server (col. 12, lines 54-55).

     In an analogous art, Kenner discloses distributed server architecture dispersed about

geographically different areas, wherein server from other alternate sites can function as a

"back up" and service user request when a server intended for user's geographic for the user

is out of service. See column 5 lines 42-43 and lines 53-55. Accordingly Kenner disclose a

first subsystem sourcing a first geographical area and a second subsystem sourcing a second

geographical area. Rowe further discloses multiple on air feeds intended for different

geographical areas, including different time zones [0080].

     Therefore it would have been obvious to further modify the art in view of Kenner and

Rowe by employing distributed server architecture dispersed about different geographical

areas, each server sourcing a feed intended for its geographical area, wherein when a server

in a second time zone fails, a reference playlist being executed by a first subsystem that

sources a first on air feed intended for viewing in at least first time zone can be used to

establish an on air feed for a second time zone based on time of day that is different that the

first time zone.

8.   Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zetts (US Pat.

6,378,129) in view of Copley et al. (US PG Pub. 2003/0061305), Kenner et al. (US Pat.

5,956,716) and Rowe et al. (US PG Pub. 2005/0060759) as applied to claim 6 above and

further in view of Hindricks (US 2001/0025377).

       With further regards to claim 7, the system is silent on wherein the second on-air feed

is substantially a time-delayed version of the first on-air feed. Hindricks is however evidence

of a second on air feed intended for viewing at a second time zone being a substantially time

delayed version of the first on air feed. One of ordinary skill in the art would recognize that

the first and second on feed sequence are substantially similar when the second is just a time

delayed version of the first. Accordingly, the play lists representing each would serve as an

effective back up for the other. All the claimed limitations were known in the art at the time

of the invention and one of ordinary skill in the art could have combined them with known

techniques yielding predictable results.

                            Allowable Subject Matter

9.   Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable

if rewritten in independent form including all of the limitations of the base claim and any

intervening claims. The following is a statement of reasons for the indication of allowable

subject matter:

       Regarding claim 8, Zetts and Hinderks teach, executing the reference playlist on a

second subsystem that sources an intermediate feed that is substantially synchronous with the

first on-air feed that is sourced by the first subsystem; and delaying the intermediate feed

using a delay unit to produce a second on-air feed that is intended for viewing in at least the

second time zone, such that the difference between the start of a given program segment in

the first on-air feed and the start of the given program segment in the second on-air feed is

equal to the time of day difference between the first and second time zones. Claim 8 recites,

inter alia, that, upon detecting a failure in the delay unit: the delay unit is bypassed such that

the intermediate feed becomes the second on-air feed; and the new playlist is loaded into and

executed by the second subsystem, wherein the prior art of record fails to teach or reasonably

suggest these limitations. Accordingly the limitations as specifically recited claim 8 is

deemed novel and unobvious to one of ordinary skill in the art at the time of the invention.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy

as set forth in 37 CFR 1.136(a).

      A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until

after the end of the THREE-MONTH shortened statutory period, then the shortened statutory

period will expire on the date the advisory action is mailed, and any extension fee pursuant to

37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner

should be directed to USHA RAMAN whose telephone number is (571)272-7380. The

examiner can normally be reached on Mon-Fri: 8am-4:30pm.

     If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

     Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information

for unpublished applications is available through Private PAIR only. For more information

about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access

to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197

(toll-free). If you would like assistance from a USPTO Customer Service Representative or

access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or

571-272-1000.

/Christopher Kelley/
Supervisory Patent Examiner, Art Unit
2424

/Usha Raman/